

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

MOOG INC.,)	Case No. 2:22-cv-09094-GW-
)	MAR
Plaintiff,)	
)	
vs.)	Los Angeles, California
)	
SKYRYSE, INC. et al,)	Wednesday, June 28, 2023
)	
Defendants.)	
_____)	

TRANSCRIPT OF HEARING RE:
DEFENDANT'S MOTION TO OVERRULE MOOG'S OBJECTION TO
SKYRYSE'S DISCLOSURE OF CONFIDENTIAL INFORMATION TO
VINCENT SOCCI
BEFORE THE HONORABLE MARGO A. ROCCONI,
UNITED STATES MAGISTRATE JUDGE

Appearances:	See next page.
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1 Los Angeles, California; Wednesday, June 28, 2023

2 --o0o--

3 (Call to Order)

4

5 THE CLERK: Calling case number LA-22-cv-9094-
6 GW-MAR, Moog, Inc. versus Skyryse, Inc. et al. Starting
7 with plaintiff, counsel, please make your appearances for
8 the record.

9 MS. ANDOH: Rena Andoh and Michael Heinz for
10 plaintiff.

11 MR. GROSS: Gabriel Gross, Latham and Watkins,
12 on behalf of Skyryse.

13 THE COURT: All right. I'll start with you,
14 Mr. Gross.

15 MR. GROSS: Thank you, your Honor. May I use
16 the podium?

17 THE COURT: Of course. I would prefer it.

18 MS. ANDOH: Your Honor, if I may, just briefly
19 before we get started. I don't necessarily have reason
20 to believe that specifics are going to be discussed about
21 the program at issue, but there's some ceiling issues.

22 So I think because the program name itself is
23 something that requires sealing that it may make sense to
24 provisionally have the transcript sealed, and then
25 hopefully, we don't need to maintain it under seal.

1 THE COURT: Okay. Mr. Gross, what is your
2 position?

3 MR. GROSS: I have no objection to that, your
4 Honor. I would be surprised if in my presentation to you
5 today I'm going to be touching on anything confidential,
6 and I can actually take measures to avoid that, but --

7 THE COURT: Maybe we can call it the program?

8 MS. ANDOH: Yeah. That would be great, your
9 Honor.

10 THE COURT: All right. Thank you.

11 MR. GROSS: Okay. Thank you, your Honor.
12 Again, Gabe Gross on behalf of Skyryse. We're here today
13 to try to resolve a dispute that the parties have over
14 the participation of a particular expert witness, whose
15 name is Vincent Socci, in this case.

16 Skyryse has engaged him, and the issue that's
17 come up is that Moog has objected to his involvement
18 based on some work he did as a contractor for Moog about
19 15 to 18 years ago, between 2005 and 2009.

20 So the briefing, I think, might give one the
21 impression of ships passing in the night a little bit.
22 The way this dispute came to be was that there's a
23 process the parties agreed to under a stipulated
24 protective order any time they'd like to disclose
25 confidential information to one of their experts.

1 Skyryse disclosed Mr. Socci and all the
2 materials about him that were required under the
3 protective order because Skyryse wanted to share
4 information that's been designated confidential. Moog
5 objected.

6 The parties met and conferred about it. The
7 protective order requires that. It also says that Moog,
8 or in this case, any objecting party, in this case Moog,
9 bears the burden of proving that it would suffer a risk
10 of harm if information were shared with the expert that
11 so greatly outweighs the party who wants to use the
12 expert, as to outweigh their need to work with him.

13 So we met and conferred. We weren't able to
14 resolve it. Moog told us that they believe the expert
15 should be disqualified from the get-go. Skyryse provided
16 its half of the joint statement, following the order
17 under the -- the procedure under the protective order and
18 explaining why Moog hadn't met the very specific burden
19 that the protective order puts on it.

20 As the Court has seen, when Moog provided its
21 response, it really didn't engage with that burden.
22 Instead, in its opposition half of the paper, it
23 essentially moved to disqualify him. So Skyryse did its
24 best to respond to that in the five-page submission.

25 This objection should be overruled, and there's

1 really three reasons that I'd like to discuss with the
2 Court today.

3 First is that Moog simply hasn't met that
4 burden, the burden that the protective order puts on it
5 to show that there's a risk that it would suffer and it
6 outweighs Skyryse's need to work with this uniquely
7 qualified expert. It doesn't even engage with that
8 burden, much less meet it.

9 Second, your Honor, on the disqualification
10 point, Moog hasn't met that burden either. That burden
11 falls on Moog, the party seeking the extraordinary relief
12 of disqualifying an expert and saying he cannot
13 participate in this case. Under the cases that Moog has
14 relied on, disqualification is not an order.

15 And then third, your Honor, the law that the
16 parties have briefed actually supports Skyryse. Skyryse
17 was limited in its five-page supplemental submission, so
18 I'd like to unpack some of this.

19 And then finally, before I conclude, I feel
20 compelled to respond to a couple of the other arguments
21 Moog made about Skyryse acting under false pretenses,
22 which is baseless, and on this idea that --

23 THE COURT: So Mr. Gross, just so you know,
24 these kinds of arguments are not that persuasive to me
25 from either side, and I'd just like to get to the

1 substance.

2 MR. GROSS: Let me limit it --

3 THE COURT: So you can -- you are welcome to
4 give me a few sentences on it, but argue as you will.

5 MR. GROSS: Understood, your Honor. I'll keep
6 that part very brief, if I touch on it at all, knowing
7 the Court's feelings about it.

8 So first, your Honor, then the burden that Moog
9 has under the protective order and under the applicable
10 law here to show that Mr. Socci shouldn't be allowed to
11 view information that was designated confidential is just
12 not one they've met.

13 They haven't articulated what this risk of harm
14 is if Mr. Socci were to review a document that they've
15 designated as confidential.

16 They certainly haven't shown that he's engaged
17 in competitive decision making, and that's one of the key
18 factors that courts consider in weighing this issue.
19 Expert witnesses who are not just employed for or work
20 for competitors, but those that are engaged in that
21 competitive decision making process are barred typically
22 from seeing a competitor's confidential information.
23 Mr. Socci isn't involved in that. And there's just no
24 evidence that Moog has come forward with to meet its
25 burden.

1 Now, Mr. Socci has provided a declaration to
2 the Court as well as signing an undertaking agreeing that
3 he will be bound by the Court's protective order. And he
4 has said, and this is, frankly, undisputed, that he does
5 not have any confidential information from the work he
6 did for Moog as a contractor 15-ish years ago, that he
7 doesn't remember the details of that work all those years
8 ago, that if he should encounter something from that time
9 when he worked for Moog, he won't use it in this case.
10 He won't disclose it to cut to Skyrise. He'll keep it
11 confidential.

12 He has sworn also -- this is above and beyond
13 what's required -- that he -- but it's appropriate here -
14 - he'll limit his work on this case to the material that
15 he's provided through the discovery process in this case
16 or that he independently collects in his own research.
17 He has no interest in using any information he might have
18 been privy to all those years ago. But just as
19 importantly, he doesn't have it, and he has no memory of
20 it.

21 So, your Honor, the issue about competitive
22 decision making is one that the Courts have, I think, had
23 a number of opportunities to encounter, especially in
24 technology cases like this one. And Mr. Socci has
25 provided undisputed evidence on this point too.

1 He doesn't work for a competitor. He founded
2 his own consulting firm; it's called On Target Motion.
3 He provides engineering services, consulting services.
4 He's never considered himself engaged in any competitive
5 decision making for any of his clients. Moog, I
6 understand disagrees, but their argument is really that
7 among his many clients are some of their competitors.

8 That's beside the point. Mr. Socci has sworn
9 under oath that he is not engaged in competitive decision
10 making for them and he never has been.

11 So there really is no factual showing that Moog
12 has made on this record of any risk it would suffer if
13 Mr. Socci is shown some confidential information in this
14 case, certainly not one that outweighs Skyrise's need to
15 work with him.

16 And Mr. Socci is unique. I personally have
17 been a part of interviewing and selecting experts in this
18 case and many other cases, and I won't repeat the details
19 of his credentials that we've put in the briefing, but,
20 your Honor, there are -- there's no one like Mr. Socci.

21 THE COURT: So you're saying there's actually
22 no other expert with Mr. Socci's expertise?

23 MR. GROSS: I have yet to find one.

24 Now, to be sure, there are other folks who work
25 in aviation, we've engaged some of them, but not somebody

1 with his unique 30 years of expertise, experience and
2 credentials that cover both software and hardware, get
3 into machinery like actuators. There's a number of
4 unique skills he brings to the table. And frankly, we've
5 been unable to leverage them, unable to benefit from his
6 expertise because of this objection, which we surely
7 would have been doing had this not come up.

8 THE COURT: Last time we saw each other, I
9 issued an order shortly thereafter inviting both parties
10 to use experts. Are you intending or would you like to
11 use Mr. Socci for any kind of future motion that you
12 would have with respect to the trade secrets and whether
13 there are particular -- they've been identified with
14 particularity after this amended process occurs?

15 MR. GROSS: We certainly would, your Honor. We
16 haven't had that opportunity.

17 THE COURT: So that's basically your intent
18 with this expert, at least one thing.

19 MR. GROSS: If this objection is overruled, we
20 will consult with Mr. Socci about that. Absolutely.

21 And there were other motions pending when this
22 issue came up. There was a motion that Moog filed
23 seeking a contempt finding and sanctions that Judge Lewis
24 tentatively denied so far. And we would have worked with
25 him on that as well, but we haven't had the opportunity.

1 THE COURT: And aren't there certain trade
2 secrets here that Mr. Socci would have worked on at least
3 a portion of them for Moog?

4 MR. GROSS: Well, that's what we have heard
5 from Moog and its witness, its declarant Mr. Peroni (ph).
6 Mr. Socci wasn't aware of that; he has no memory of those
7 particular things.

8 In meeting and conferring, Moog told us about
9 three particular trade secrets by number and said that he
10 worked on them. They didn't expand on that or tell us
11 what he did. And frankly, Mr. Peroni's declaration
12 doesn't tell us how any work he may have done on
13 particular programs relates to this case.

14 But those alleged trade secrets are in the
15 category of trade secrets that your Honor found Moog
16 still hasn't sufficiently identified. We don't know what
17 they are.

18 So it's certainly possible, according to Moog,
19 and I don't have any reason to doubt that when he did
20 work, they touched on those programs, but Moog hasn't
21 made any showing that he did specific work that relates
22 to the claims in this case that would create some sort of
23 risk for them that outweighs Skyryse's need to work with
24 him.

25 And we need to keep in mind, your Honor, that

1 Mr. Socci has not only agreed to abide by the protective
2 order generally, but that protective order has safeguards
3 built into it, as so many protective orders do, on what
4 those who are allowed to see confidential designated
5 information can do with it.

6 Under court order, he can't use it for any
7 purpose other than this action. He has to secure it in a
8 responsible manner. He has to abide by every restriction
9 and safeguard that's in there, and there's no reason to
10 believe he wouldn't do that.

11 Your Honor, I think the closest that Moog has
12 come to making a factual showing of the risk that the law
13 and the protective order says it has to show to meet its
14 burden and show that it outweighs Skyryse's need is
15 Mr. Peroni's declaration, it's paragraph 19. And for the
16 record, that's Docket number 516-2. And what Mr. Peroni,
17 an engineer at Moog, said is very general. It's not
18 specific to Mr. Socci. He said Moog would be severely
19 prejudiced if its confidential information was purposely
20 or accidentally transmitted outside Moog.

21 That's abstract. It's cursory. It's not
22 specific to this case or to Mr. Socci, and it's --
23 frankly, it's unexceptional. Every technology company in
24 any civil action could say that about discovery. If
25 there's confidential information that's discovered and

1 it's treated cavalierly, that could create a risk. Of
2 course it could, but that's what the protective order is
3 in place to avoid.

4 And Mr. Socci has not only committed to abiding
5 by it, he's gone a step farther and said that he won't
6 use anything he might encounter, although he has no
7 reason to expect he would, from his time working at Moog
8 15, 16, 17, 18 years ago, in this case. And, of course,
9 when I said work at Moog, I should correct myself. He
10 did some contracting for Moog; he was never a Moog
11 employee.

12 Your Honor, let me touch, please, on the
13 disqualification standard that Moog has raised here. And
14 Moog didn't file its own motion seeking this relief; it
15 was in its opposition to Skyrise's dispute to resolve the
16 objection under the protective order that it raised it.

17 The way I understand Moog's argument is that if
18 an expert once worked for its adversary and received
19 relevant confidential information, it's forever barred
20 from participating in litigation against that adversary.
21 And that's just not the law. There is no bright line
22 rule on this point.

23 In fact, that's what some of the cases that
24 Moog relies on say. The Staley case at page one says,
25 and I quote, "There is no bright line rule for expert

1 disqualification." And in unpacking that legal standard,
2 the Court in that case pointed out that courts have to
3 balance policies and fairness concerns to figure out
4 what's right for that case, and it's very specific.

5 Yes, whether there was a confidential
6 relationship matters and whether the expert received
7 confidential information that's relevant does matter, but
8 it's part of this balancing test, which is really more
9 nuanced. And court after court has commented on how this
10 is a very drastic measure that an objecting party would
11 be seeking when trying to disqualify an expert, and
12 they're reluctant to grant it absent a pretty
13 extraordinary showing.

14 So let's look at Moog's showing here.

15 We have Mr. Peroni's declaration that says
16 Mr. Socci had a confidential relationship with the
17 company when he did his contracting work. And I think we
18 can assume for purposes of this argument that that's
19 true, but we asked for repeatedly and Moog never provided
20 any confidentiality agreement, so we don't know what his
21 obligations were, if any, to Moog 15 to 18 years ago. We
22 don't know if they're in place today. We don't know what
23 qualifications or exceptions or waivers might have been
24 in that confidentiality agreement.

25 And waivers are important. Moog may have

1 agreed in that same confidentiality agreement that by
2 engaging him to do X, Y and Z, they wouldn't seek to
3 disqualify him knowing he has a consulting practice in
4 any matters related to A, B and C, or something like
5 that. And that's not just hypothetically, your Honor.
6 That's actually not uncommon, and the Staley case that
7 Moog relies on deals with that sort of situation.

8 In Staley, the expert's agreement actually
9 showed that the defendant said it would not seek
10 disqualification in matters involving patent litigation
11 or patent consultation. That was very much an issue in
12 that case.

13 But all Moog has, because it no longer has his
14 contract because it was so long ago that it engaged in
15 it, is Mr. Peroni's say so that, hey, we treat these
16 things confidentially, he had a confidential
17 relationship. That's not enough to meet their burden.
18 They don't have the contract.

19 Now, we're not disputing that one may have
20 existed, and Mr. Socci is not disputing that. He's
21 saying he doesn't have it, either. He doesn't remember
22 it. If he has any confidentiality obligations, he will
23 honor them. And that's why he went to those great
24 lengths to show that and to swear in a sworn declaration
25 that he won't use anything from that time.

1 So, your Honor, under these facts, Moog just
2 can't meet its burden to show that this expert should be
3 disqualified. And I think the cases it relies on make
4 that point for us, and the one that, you know, figured
5 large in Moog's briefing and I think is important here is
6 the SSL case. That stands for Space Systems Laurel case.

7 And the case dealt with two experts, one of
8 whom was disqualified and one of whom was not. And the
9 one who was disqualified had a pretty different scenario
10 than Mr. Socci or the other expert in that case. He had
11 worked for the adversary for something like 29 or 30
12 years up until about four or three years before the
13 lawsuit was filed, and he worked directly on the
14 information that was relevant in that case. And I
15 believe there was also a confidentiality agreement that
16 the parties could look to and understand and read in that
17 case. He was disqualified and rather summarily so.

18 But the second expert was named Dr. Kaplan, and
19 he worked for SSL's adversary. He had access to
20 confidential technology that was relevant. And he had
21 signed numerous confidentiality agreements with the
22 adversary, Martin Marietta. But the Court didn't award
23 this drastic remedy of disqualification in that case, and
24 it didn't disqualify him for a couple very logical and
25 sound reasons.

1 One was that he had stopped working. It was
2 consulting. Stopped consulting for Martin Marietta five
3 years before the lawsuit. Any relevant information, what
4 the Court called his meaningful involvement with Martin
5 Marietta, had ended over 15 years ago, just like
6 Mr. Socci's.

7 The Court found that the parties had agreed
8 there that he didn't have any confidential information in
9 his possession, just like Mr. Socci. And the Court noted
10 that this guy is a renowned expert in the field, and in
11 that case, it was satellite control.

12 And based on all those facts, despite him
13 having consulted with and worked for the adversary 15
14 years ago and having relevant information shown to him
15 back then, the Court said there's little danger in his
16 participation as an expert in this case, there's little
17 danger that that will prejudice Martin Marietta, and it
18 denied the disqualification motion.

19 But the Court did something else too, and it's
20 something that Mr. Socci has already volunteered to do,
21 in fact has committed to doing. The Court in SSL said
22 that this expert, Dr. Kaplan, would be prohibited from
23 disclosing to SSL, his client, or testifying about
24 information he had gained while bound by his
25 confidentiality agreements in working with Martin

1 Marietta.

2 Mr. Socci has already committed to doing the
3 same thing. He has said I won't use anything I might
4 come across. He doesn't have any reason to believe he
5 will, but anything I might come across from the years in
6 which I worked with Moog in my work on this case; it'll
7 be based on the information that's developed here that I
8 independently researched. And that's sufficient to avoid
9 any risk to Moog, risks that, frankly, Moog hasn't
10 articulated.

11 And I think Mr. Peroni's declaration is really
12 the evidence of that. He describes the specifics that he
13 says secondhand that Mr. Socci worked on, but he doesn't
14 articulate any sort of risk or prejudice.

15 And, your Honor, the premise, the sort of
16 unspoken premise of Moog's disqualification motion is
17 that Mr. Socci can't be trusted or Skyrise can't be
18 trusted.

19 There's nothing in the record to suggest that.
20 Nothing. He's bound by the protective order. They hired
21 him themselves. He's sworn to honor any confidentiality
22 obligations. There's no reason to impugn this man's
23 integrity, or counsel's, or to think that he wouldn't
24 honor either his commitment to the Court to be bound by
25 the protective order, the other commitments he's made in

1 his sworn declarations, or any confidentiality
2 obligations that may still exist all these years later to
3 Moog.

4 It's not a relevant part of his qualifications,
5 but the man is an ordained minister in the Methodist
6 Church. There is simply no reason to think that he
7 cannot be trusted, which I think is the underlying theme,
8 the undercurrent of Moog's motion.

9 THE COURT: Although I do think that, although
10 there wasn't litigation at this, back in the time where
11 Mr. Socci worked on contract anyway with Moog, it's a
12 little bit like switching sides, which raises some
13 concerns. And I think if you were working for that firm
14 over there, you would see that as a potential prejudice
15 or harm to their case.

16 So I appreciate your arguments, are you -- can
17 we move on to --

18 MR. GROSS: I'm just about -- I'll wrap it up.

19 THE COURT: All right. Thank you.

20 MR. GROSS: There is a side switching case that
21 came up in the briefing and it dealt with an expert hired
22 by counsel after he had spoken with counsel for the other
23 side. And the first party that contacted him went nuts
24 and moved for disqualification. That is not what we're
25 talking about.

1 THE COURT: Right. But it's just an analogous,
2 kind of. It's a concern that I think every lawyer has or
3 should have. I would have been shocked if they hadn't
4 raised it.

5 MR. GROSS: I do understand the concern. I
6 think it's misplaced in this case where he did
7 engineering work 18 years ago that he's sworn he doesn't
8 remember the details of.

9 Finally, your Honor, the counsel from Moog
10 raised this notion that Mr. Socci could be a fact witness
11 as well in this case, and how awkward would that be if he
12 had to be both a fact and an expert witness at the same
13 time?

14 I think the Court can dismiss this. First of
15 all, expert witnesses are fact witnesses in a number of
16 intellectual property cases because of their frequent
17 involvement with prior art, with the development of
18 technologies, that sort of thing. But we don't have any
19 real fact-based reason to think that would be the case.
20 He hasn't done any work for the company for 15 years and
21 has no memory of it.

22 And Moog has had its opportunity. It took it
23 to disclose all of the witnesses they think might have
24 discoverable information. We've exchanged initial
25 disclosures, and they didn't, you know, they didn't lay

1 off. It's got a bunch of Skyryse employees and ex-
2 employees and Moog employees and third parties in it.
3 Mr. Socci isn't one of them.

4 And they raised this in their briefing. They
5 didn't amend their 26A1's to suggest he was going to be a
6 fact witness. There's no reason on this record to think
7 he would be, much less reason not to sustain the
8 objection to him.

9 And then finally, your Honor, the point about
10 Skyryse having other experts, we do have other experts.
11 None are like Vince Socci, and Moog's laundry list of
12 them, including computer forensics people and an expert
13 in intellectual property and other IT experts that have
14 nothing to do with Mr. Socci's expertise, frankly, don't
15 move the needle. I think the other experts and the fact
16 witness arguments can frankly be summarily dismissed. So
17 unless the Court has questions, I'm happy to stop for
18 now.

19 THE COURT: All right. Thank you, Mr. Gross.

20 MR. GROSS: Thank you, your Honor.

21 MR. HEINS: Good morning, your Honor.

22 THE COURT: Good morning.

23 MR. HEINS: Mike Heinz from Shepherd Mullin on
24 behalf of Moog. I think we need to look at the risk
25 versus harm analysis that Skyryse keeps talking about

1 because they're off on it. They're looking at
2 Mr. Socci's risk of disclosing confidential information
3 learned under the protective order to third parties.
4 That's what the competitive decision making is all about.

5 That's not Moog's objection. The risk of harm
6 to Moog is that Mr. Socci worked for Moog for 3000 hours
7 on the trade secret at issue in this case, and is going
8 to disclose that information to Skyryse.

9 Now, we're not saying that Mr. Socci as a
10 minister or anyone is untrustworthy. We are saying that
11 he did so much work on this program that when he has
12 access to all of the discovery files again, it's going to
13 be impossible for him to know whether or not what he's
14 disclosing to Skyryse he's learning from discovery or
15 from his confidential relationship with Moog. That's the
16 risk of harm.

17 That is what this is all about. It has nothing
18 to do with that we believe he's going to purposely breach
19 the safeguards of the protective order. We're not
20 alleging that.

21 THE COURT: All right. So basically, if he's
22 not disqualified, then your objection to disclosure
23 doesn't stand. In other words, you believe that he would
24 abide by the terms of the --

25 MR. HEINS: I have no reason to believe he

1 would not purposely breach the terms of the protective
2 order. But again, the key is that the only way he can
3 have access to protective order material under the
4 protective order is as an expert in this case, and he
5 seems plainly to be disqualified from working as an
6 expert based on his prior work at Moog.

7 So the issue is for the risk versus harm
8 analysis, despite having their brief and counsel being up
9 here, they have not articulated a need to disclose
10 confidential information to an expert that they can't use
11 in the case. They have 10 other experts. They have
12 other aviation experts. They haven't shown why they need
13 to give confidential information to a person who can't
14 act as an expert.

15 For this exact reason, that is why courts have
16 repeatedly ruled that it's improper for you to use a
17 former employee that has relevant knowledge about the
18 case as an expert against that party.

19 THE COURT: Is there somebody on the list that
20 you have provided for me in the joint stipulation that is
21 as unique as Mr. Socci?

22 MR. HEINS: Your Honor, we believe that
23 Mr. Locke (ph), who is described as a full-time
24 consultant like Mr. Socci in the military, aerospace and
25 industrial control sectors, appears to be -- have the

1 same experience as Mr. Socci. The only difference
2 between Mr. Socci and Mr. Locke, as far as we can tell,
3 is that Mr. Socci worked for Moog and has specialized
4 knowledge about this case. That's why Skyryse wants to
5 use him. That's improper.

6 So getting back to the disqualification and
7 improper use of expert, it's a simple two-part test that
8 Skyryse can't get around. It's did you have a
9 confidential relationship with the expert, and did you
10 disclose confidential information to the expert during
11 that relationship?

12 The answer to that is obviously yes. Moog is a
13 military and government aircraft company that works on
14 sensitive government projects that by law cannot be
15 disclosed outside of the company. They're a government
16 contractor.

17 All of Moog's engineers know that they can't
18 disclose that information. Mr. Socci, in his declaration
19 even says that's typical of all the aircraft industries
20 that he's worked with.

21 He had a confidential relationship. The law
22 doesn't require you to show that you had a confidential
23 agreement or that you're abiding by that. We're not
24 arguing that he's breached any contract with Moog, but we
25 are saying that he had a confidential relationship and

1 that's all the test requires.

2 THE COURT: Do you have a -- does Moog use a
3 consultant agreement? I mean, have they used the same
4 consultant agreement over all these years that I could
5 look at?

6 MR. HEINS: Moog has used, we believe,
7 different consulting agreements. We were not able to
8 find the one that we believe Mr. Socci signed, but I
9 believe we can provide the typical --

10 THE COURT: But are the terms -- would the
11 terms have been materially altered over the years?

12 MR. HEINS: I do not believe so. So we can
13 work on providing that to you in a supplemental filing,
14 if you'd like.

15 THE COURT: I'd appreciate that.

16 MR. HEINS: Okay. So once we establish that,
17 then the only question is did Moog give Mr. Socci
18 confidential information? And the answer to that is
19 obviously yes. He was working on sensitive government
20 programs. He's given presentations about those programs.
21 His work is going to the largest defense contractor in
22 the country. He's on presentations showing that he had
23 Moog proprietary and confidential information.

24 That confidential information, again, is
25 directly related to one of the trade secrets in this

1 case. While counsel said that Moog did not define that
2 trade secret, and I understand that that is one of the
3 issues that the parties are continuing to work out, Moog
4 did provide counsel with respect to that trade secret a
5 listing of 4500 software files that directly relate to
6 that program. They know what the trade secret is.
7 Moog's working to describe it better pursuant to your
8 Honor's order, and we recognize that, but there's no --
9 the parties know what the issue is.

10 The second thing is Mr. Gross stood up here and
11 said that they -- we were not forthcoming in telling them
12 what Mr. Socci did at Moog. But Skyryse and Latham and
13 Watkins are already working with Mr. Socci. They could
14 have asked him what he did for Moog.

15 Again, he worked for four years at Moog and
16 worked 3000 hours on the trade secret at issue. It is
17 not believable that he does not remember almost two
18 entire full work years of work on a program. Moog wasn't
19 hiding anything. They had access to him.

20 The only reason that Mr. Socci would not have
21 been able to tell Skyryse what he worked on at Moog is if
22 he thought he was under a confidentiality obligation to
23 Moog and couldn't tell them. That, again, supports
24 Moog's argument of the confidential relationship.

25 In the supplemental brief, as we said, Skyryse

1 really didn't address Moog's true objection to Mr. Socci
2 working as an expert for Skyrise. They stated that
3 Mr. Socci has no confidential information about Moog.
4 For the record, that was not in a signed declaration;
5 that was attorney argument.

6 But even if that's true, he is about to have
7 terabytes upon terabytes of information refreshing his
8 recollection about Moog. If he doesn't remember what he
9 worked on for 3000 hours now, he's going to remember it
10 when he looks through all of Moog's information. And at
11 that point, he's not going to be able to distinguish what
12 he learned at Moog and what he learned in discovery.
13 It's impossible.

14 That's the protection that the disqualification
15 issue seeks to resolve, and that's the harm to Moog.

16 THE COURT: Okay. Thank you. I appreciate
17 that. And this is fairly messy.

18 Mr. Gross, do you have anything further to add?

19 MR. GROSS: Very, very briefly, your Honor.

20 THE COURT: I'm sorry. Are you done,
21 Mr. Heins? Did you have anything else? I don't mean to
22 cut you off.

23 MR. HEINS: No. I mean, I think I hit the main
24 issues. I would like to mention with respect to the fact
25 witness and expert witness line.

1 Again, we admitted that it's not a bright line
2 rule that an expert witness and a fact witness can't
3 operate together, and we understand that Mr. Socci's not
4 on the Rule 26 disclosures. But that said, one of the
5 main issues in the case is going to be how did Moog
6 protect its trade secrets.

7 And Mr. Socci is going to have to be on the
8 stand talking about potentially whether or not Moog
9 adequately protected its trade secrets. No one in the
10 room is going to know if he's speaking from experience as
11 a general expert in the room or as a fact witness when he
12 worked at Moog and how Moog actually protected the trade
13 secrets.

14 THE COURT: He might not even know.

15 MR. HEINS: Right.

16 THE COURT: That's your argument?

17 MR. HEINS: Yes.

18 THE COURT: I got it. I understand.

19 MR. HEINS: And so, again, this harm to Moog is
20 exceptional, and Skyryse has plenty of experts. They
21 haven't shown why Mr. Socci is actually unique other than
22 the fact that he worked for Moog.

23 THE COURT: All right. Thank you so much.

24 Mr. Gross, just quickly, please.

25 MR. GROSS: Thank you, your Honor.

1 Mr. Socci swore to this Court, I have not
2 retained and do not have possession of any of the Moog
3 information, confidential or otherwise, that I may have
4 had or worked on at the time of my contract with Moog.
5 That's paragraph 14 of his declaration.

6 Paragraph 15, he said if he remembers it or
7 recalls it, he will keep that information confidential
8 and will not share it with Skyryse or use it for any
9 purpose in connection with this litigation.

10 The discovery process will eventually unfold.
11 It will turn over information. He has committed to using
12 only that information in his work on this case. Moog has
13 not given us a reason that he can't be trusted to do
14 that, your Honor.

15 Mr. Heinz repeated what I think is a legal
16 fallacy that there are only two criteria for
17 disqualification. Please take a look at the Staley case;
18 please take a look at the SSL case. They explain there
19 is no bright line rule. There are two factors that
20 should be considered among others the Court must balance.

21 This is a nuance decision, and we understand.
22 They are trying to keep Skyryse from using this
23 singularly experienced expert whose last engagement with
24 Moog was a decade and a half ago.

25 Finally, your Honor, the promise of

1 supplemental briefing on the contract issue was one that
2 intrigued me, but I also would like to request that if
3 the Court is inclined to entertain their disqualification
4 request, which they did not move for, they raised it in
5 an opposition to our statement about the protective order
6 objection, that Skyryse be given an opportunity for full
7 and fair briefing on it, which we haven't had. We were
8 limited to five pages in the supplement after that,
9 because it wasn't the issue that the parties had teed up,
10 as we understood it, through the meet-and-confer process
11 and as the protective order required.

12 THE COURT: Okay. I appreciate it, Mr. Gross.

13 MR. GROSS: Thank you, your Honor.

14 THE COURT: Can I ask your position on that, on
15 fuller briefing?

16 MR. HEINS: Sure, your Honor. I think Moog is
17 welcome to fuller briefing, again, and we put in our
18 motion all of the steps in the meet and confer where we
19 clearly explained our objection to Mr. Socci under the
20 protective order, so we're not sure why Skyryse didn't
21 already do that. But if the Court thinks it needs more
22 full briefing, we believe that you'd have the opportunity
23 to see all of that briefing, so we have no issues with
24 that.

25 There is just one thing that I do want to bring

1 up that Mr. Gross said about, he keeps going back to this
2 15 to 18 year issue. Again, that's not relevant here
3 because the trade secret when it was developed was
4 developed at that exact time. The fact that it's old
5 doesn't matter. It's a trade secret. It's closely held.
6 The information that Mr. Socci had then is just as
7 relevant today as it was at that time. And that's what's
8 distinguishable from the Space System case that Mr. Gross
9 is referencing.

10 THE COURT: All right. Thank you, Mr. Heins.

11 MR. GROSS: Thank you, your Honor. Just to
12 complete the record on that point, I'd just like to
13 remind the Court that, according to Moog, there were 30-
14 something trade secrets at issue here. They are seizing
15 on one in an effort to keep Skyrise from working with its
16 selected expert. Thank you.

17 THE COURT: I understood there were three, but
18 from what you all had briefed, it's just one?

19 MR. HEINS: Sorry. Mr. Gross is correct in
20 that there are about 30 trade secrets.

21 THE COURT: No, no, no, I understand that. I'm
22 saying that's relevant to Mr. Socci.

23 MR. HEINS: Yes. He generally has about three.
24 Obviously, most of his work was done on one, so that's
25 why the briefing is focused on that, but it is relevant.

1 THE COURT: All right. Understood. Okay.
2 Thank you. Thank you so much for your arguments today.

3 MR. GROSS: Thank you, your Honor.

4 THE COURT: They're very helpful, as usual.

5 MS. ANDOH: Your Honor, if I may just for point
6 of clarification, should we hold off on submitting
7 anything further on the contract piece until we receive
8 further instructions from the Court?

9 THE COURT: If you can get me some contract by
10 the close of business today, I will consider it.

11 MS. ANDOH: Understood, your Honor.

12 THE COURT: Thank you.

13 THE CLERK: This court is adjourned.

14 (Proceedings Concluded)

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I certify that the foregoing is a correct transcript
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Terri Harper

Terri Harper, CET-D709

July 1, 2023

FEDERALLY CERTIFIED TRANSCRIPT AUTHENTICATED BY:

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